

THE ONTARIO HUMAN RIGHTS CODE

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IN THE MATTER of an Inquiry into the Complaint
of Miss Dolores McKenzie, that she was discrim-
inated against because of her race or colour

BOARD OF INQUIRY - PROF. D.E. SANDERS

Miss Dolores McKenzie, a negro woman, made a complaint (exhibit 2) that she had been denied accomodation by Mrs. Maria Gross on the bases of race or colour. The discrimination was alleged to have occurred on Thursday, May 28th, 1970, and involved a self-contained dwelling unit, apartment 9, at 316 Chippawa Street in the City of Windsor in the Province of Ontario.

On December 22nd, 1970, the Minister of Labour appointed this Board of Inquiry. Hearings were held on February 15th, 1971, and March 30th, 1971, in the Municipal Court Building in Windsor. A further hearing on the question of what recommendation the Board should make was held on September 15th. The Human Rights Commission was represented by Mr. John Sopinka. Mrs. Gross, although aware of her right to have counsel, chose not to be represented. Although Mrs. Gross' manner made it difficult to conduct the inquiry, I am satisfied that Mrs. Gross was aware of her right to have counsel and had full opportunity to present evidence and to make submissions. The inquiry was adjourned to March 30th to hear a witness (Mr. McGowan) named by Mrs. Gross in her testimony. His evidence, it appeared, might be helpful to her case. This was done at the instigation of the Board. Mrs. Gross did not request an adjournment and stated at one point that she did not think it was necessary to call Mr. McGowan (answer to question 77, page 53, February 15th). She did not object to the calling of Mr. McGowan and was given an opportunity to suggest any other witnesses that should be called (line 24, page 54, February 15th).

The only feasible way to hear a submision by Mrs. Gross appeared to be to let her comment on what she regarded as

errors in the testimony given on February 15th. She was allowed to do this in some detail (this testimony covers 13 pages of transcript). Extensive repetition of her statements was permitted to ensure that her submissions were fully made. She appeared satisfied. She stated that most of what she wanted to say had been covered three or four times (answer to question 164, page 42, March 30th) and that everything had been covered to her satisfaction (answer to question 165, page 42, March 30th).

The facts are as follows. Mrs. Maria Gross published an advertisement in the Windsor Star newspaper on Thursday, May 28th, 1970, which read:

"3-ROOM apartment with bath, fridge, stove, single clean person. West side. \$75.00 monthly.
256-275800"

The apartment, which the evidence clearly established was a self-contained dwelling unit, was apartment number 9 in an apartment building run by Mrs. Gross at 316 Chippawa Street.

Miss Gonja Vanhall, a legal secretary, phoned Mrs. Gross shortly after 5 p.m. on May 28th. She then went to see the apartment at about 6 p.m. Miss Vanhall indicated a desire to rent the apartment, but she did not have funds to pay the deposit of \$75.00 requested by Mrs. Gross. Miss Vanhall indicated she would return with the deposit money but stated that Mrs. Gross did not say she would hold the apartment for her (answer to question 81, page 27, February 15th). Mrs. Gross testified that she promised to hold the apartment for Miss Vanhall (answer to question 25, page 40, February 15th).

Mrs. Elaine Bender, a caucasian friend of the complainant Dolores McKenzie, telephoned Mrs. Gross at about 5 p.m. on May 20th. Mrs. Bender and Miss McKenzie drove to 316 Chippewa and arrived there between 6:30 and 7 p.m. Miss McKenzie went into the building alone and was told by Mrs. Gross that the apartment was rented. Miss McKenzie states that Mrs. Gross said it was rented to a lady who had just left (line 42, page 5, February 15th). Mrs. Gross denies saying the latter but admits telling Miss McKenzie the apartment was rented.

Miss McKenzie returned to Mrs. Bender's car. Mrs. Bender drove around the block once and again parked near 316 Chippewa. Mrs. Bender went into the building, leaving Miss McKenzie in the car. Mrs. Bender, with no intention of renting the apartment, asked Mrs. Gross if the apartment that had been advertised was still available. Mrs. Gross said yes and gave Mrs. Bender a key to look at the apartment for herself. Mrs. Bender looked at the apartment. She then told Mrs. Gross that she would have to talk to her husband about the apartment. Mrs. Gross wrote out her name and address on a slip of paper (exhibit 6) at Mrs. Bender's request, to facilitate Mrs. Bender contacting her about the apartment. The advertisement specified a single person, but Mrs. Bender indicated that Mrs. Gross made no objection to the idea of a couple renting it. It is of interest to note that by Mrs. Gross' testimony a married couple were the tenants in Apartment 9 on March 30th of this year (answer to question 169, page 43, March 30th).

Mrs. Bender left the building and gave the slip of

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paper (exhibit 6) to Miss McKenzie. Miss McKenzie returned to the building to confront Mrs. Gross. Miss McKenzie testified that Mrs. Gross became very excited and tried to grab the slip of paper (exhibit 6) from her hand (answer to question 35, page 7, February 15th). Mrs. Gross denies attempting to grab the slip of paper. Mrs. Gross said she would explain. Miss McKenzie said she would report Mrs. Gross and left without hearing an explanation. These events would be completed by 7 p.m.

Some time between 7 and 7:30 Miss Vanhall returned with funds which she paid to Mrs. Gross as a deposit on the apartment.

Miss Vanhall testified that Mrs. Gross stated at that time that a coloured person had tried to rent the apartment, but that she would never rent to a dirty nigger because they were a bunch of thieves, liars and crooks (page 24, February 15th). Mrs. Gross denies she made the exact statements mentioned by Miss Vanhall. Miss Vanhall also testified that Mrs. Gross later asked her to say that she had rented the apartment at noon on May 28th. This request by Mrs. Gross, according to Miss Vanhall, came after an initial investigation of the incidents of May 28th by the Human Rights Commission. Mrs. Gross stated she made this request thinking that the apartment had been rented by Miss Vanhall earlier in the day (answer to question 58, page 44, February 15th).

Mrs. Gross testified that she told Miss Vanhall during their first meeting (around 6 p.m., May 28th) that she would

hold the apartment for her. Mrs. Gross testified that she learned that Miss Vanhall was a legal secretary. She testified that she had previously had a good tenant who stayed for two and a half years, who was a legal secretary. For this reason Mrs. Gross was willing to hold the apartment for a brief time to permit Miss Vanhall to get the cash for a deposit (testimony beginning on page 40, February 15th). She testified that this was an exception to her regular policy (answer to question 25, page 40 and answer to question 66, page 45, both on February 15th).

Miss Vanhall testified that Mrs. Gross did not learn she was working for a lawyer until a couple of weeks later (answer to question 84, page 28, February 15th) and, as noted earlier, testified that no promise was made to hold the apartment.

Mr. McGowan, a tenant in Mrs. Gross' apartment building on May 20th, testified that Mrs. Gross had told him that she had rented Apartment 9. This conversation, he stated, took place after Miss Vanhall's first visit to the apartment.

Mrs. Gross described Mrs. Bender as a "sniffer". This meant that Mrs. Bender was just looking and wasn't very serious about renting. Mrs. Gross gives two explanations for telling Mrs. Bender that the apartment was available. I think it is significant that the explanation given on February 15th changes in the testimony given on March 30th. On February 15th Mrs. Gross states (pages 41 & 42) that because she believed Mrs. Bender

was not serious (just a "sniffer") she let her see the apartment and told her the apartment was available. She knew Mrs. Bender would not take it. Therefore her actions were not inconsistent with having promised to hold the apartment for Miss Vanhall. This explanation is difficult to accept because stating the apartment was rented would have been an easier way to rid herself of a bothersome "sniffer". In addition Mrs. Gross' behaviour in writing out her name and telephone number seems inconsistent with her alleged dismissal of Mrs. Bender as a serious inquirer. Mrs. Gross explains that she had concluded that Miss McKenzie was serious and therefore she told Miss McKenzie that the apartment was rented.

Mrs. Gross says clearly in her evidence that she would not have rented to Mrs. Bender at that time.

"Q If you thought she was serious about the apartment, would you let her have it?

A No, she has husband.

Q If she had been single, would you let her have it if she took it right there?

A I would have said, "it is rented; I can not do it. Come back later". (questions 72 & 73, page 46, February 15th)

The second explanation, although hinted at in the evidence of February 15th in the answers to questions 66 and 68 on page 45, is inconsistent with the first. It was that between Miss McKenzie's first visit and Mrs. Bender's visit, Mrs. Gross began to have doubts whether Miss Vanhall would come back. Fearing she would not get a tenant if she waited for Miss Vanhall

she was prepared to offer the apartment to Mrs. Bender. The weakness of this explanation appears to be the short time which elapsed between the first visit of Miss McKenzie and the visit of Mrs. Bender (probably no more than 5 minutes). Mrs. Gross gives an explanation for the sudden change of mind which is based on the fact that Miss McKenzie is negro. It was important, Mrs. Gross testified, to get a tenant without having to place another advertisement. A second advertisement would probably lead Miss McKenzie to conclude that she had been refused on the basis of race or colour (answer to questions 12, 13, and 14, page 22, March 30th). Then Mrs. Gross would be in trouble with the Human Rights Commission. This explanation is that the fear of her actions being misunderstood, led her to be willing to break her promise to Miss Vanhall to hold the apartment. The possibility of being misunderstood only occurred to Mrs. Gross, she would say, after Miss McKenzie had left. This explanation involves an unusual defensiveness or anticipation of possible charges of discrimination. Although renting to Mrs. Bender would be as apparently incriminating as placing a second advertisement, the public character of an advertisement gives the explanation an internal consistency that Mrs. Gross' other statements of explanation lack.

Mrs. Gross made strong statements in relation to negroes. She said that she had had great trouble with negroes and for that reason called them liars and crooks (answer to question 92, page 33, March 30th). She also described Miss McKenzie as having a "wolf face" (answer to question 40, page 25 and answer to questions 150 & 151, page 40, both March 30th). These statements indicate a general racial bias on Mrs. Gross' part (although she

later says, "I am not against negroes at all. There are nice people, but I have very bad experience and I was afraid."

(answer to question 169, page 43, March 30th). The Human Rights Code, however, does not deal with attitudes but acts. The issue was whether Mrs. Gross refused rental to Miss McKenzie on account of race. Although the expressions of bias noted above are consistent with the alleged act of discrimination, standing on their own they have no probative value. They can only support or confirm other evidence, which is sufficient to satisfy this Board that an act of discrimination has taken place contrary to the Human Rights Code. Mrs. Gross does state she would not rent to negroes (answer to questions 136 & 137, page 39, March 30th) which goes beyond an expression of prejudice to an assertion of a course of action that she would follow, a course contrary to the Human Rights Code. Yet her testimony is that she was not motivated by racial discrimination in telling Miss McKenzie that the apartment was taken.

I was impressed by the evidence of Miss Vanhall and accept her testimony. I find that there was no arrangement between Mrs. Gross and Miss Vanhall that the apartment would be held for Miss Vanhall's return. I do not accept the evidence of Mrs. Gross or Mr. McGowan to the contrary.

Mrs. Gross, within a very short period, told Miss McKenzie that the apartment was rented and then told Mrs. Bender that it was available. I cannot accept Mrs. Gross' explanations. The evidence satisfies me that Mrs. Maria Gross denied Miss McKenzie occupancy of a self-contained dwelling unit because of

race and colour.

Mr. Sopinka, for the Commission, submitted that Mrs. Gross should be prosecuted. However, the time period for a prosecution has expired.

There was clearly inconvenience and annoyance suffered by Miss McKenzie. Miss McKenzie appears to be a self-assured and intelligent woman and, while she could rightfully feel some bitterness towards the racism of people like Mrs. Gross, I doubt that the encounter which was the subject of this inquiry was emotionally upsetting to her. I feel that damages should be assessed against Mrs. Gross on the basis of the inconvenience and annoyance caused to Miss McKenzie. For these reasons, I recommend that Mrs. Gross be ordered to pay Miss McKenzie the sum of \$80.00 as damages.

I further recommend that Mrs. Gross be required to indicate in writing to Dr. Louis Fine, the chairman of the Ontario Human Rights Commission, an intention to comply in the future with the Ontario Human Rights Code.

I further recommend that Mrs. Gross be required to list with the Human Rights Commission office in Windsor all vacancies in any apartment under her control for a six month period.

I recommend that Mrs. Gross be required to pay the

sum of \$80.00 and to write to Dr. Fine within a three week period from the making of an order, should the Minister see fit to make an order.

Douglas Sanders

D. E. SANDERS
Chairman.

